



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: November 18, 2014
Re: Proposed Changes to Statutes

The Ethics Commission is authorized to recommend statutory changes to the Legislature pursuant to 1 M.R.S.A. § 1009. If you approve of them, we suggest submitting the legislation relatively soon to encourage the printing of the Commission's bill during the early part of the First Regular Session. We may be proposing one additional change at your December 22 meeting that might be appropriate for a separate bill.

We enclose for your consideration:

- three changes to the Lobbyist Disclosure Law (Title 3, Chapter 15), followed directly by a memo explaining the proposed change concerning lobbyist registration fees (4 pages total)
- one change to the Maine Clean Election Act (Title 21-A, Chapter 14) (2 pages total)
- multiple changes to the Campaign Reports and Finances Law (Title 21-A, Chapter 13) (29 pages total)

The insertions and deletions are marked with a star in the left margin. Below each change is an explanation in italics.

Thank you for your consideration of this item.

Proposed Changes to Lobbyist Disclosure Procedures Law
(Title 3, Chapter 15)

3 § 314. Duration of registration

Each joint registration filed pursuant to this chapter automatically expires on the last day of the year during which the person was registered to lobby, unless as otherwise provided.

A joint registration expires if the lobbyist or employer notifies the commission in writing that the lobbyist is no longer engaged by the employer to lobby. If termination occurs prior to November 30th, the notification must be given within 30 days of the termination.

If termination is effected prior to November 30th, no further reports are required.

Any new registration must be filed pursuant to section 313 before any lobbying is commenced after the lobbyist's employment has been terminated.

Lobbyists register with the Commission on behalf of a client (the “employer”) annually. After registering, lobbyists are required to file monthly reports. Under § 314, the registration may be terminated if the Commission receives a written notice that the lobbyist is no longer lobbying for the client. The Commission proposes that either the lobbyist or the client be able to file the termination notice with the Commission.

3 § 316-A. Registration forms for state employees or state agency employees

The commission shall prepare and make available registration forms for the registration of state employees or state agency employees required to register pursuant to section 313-A. These forms must include the following information:

1. Names. The name, business address and contact information of the employee and the department or agency the employee is representing and the address for the publicly accessible website of the department or agency the employee is representing;

2. Position description. A position description;

3. Description of agency. A description of the department or agency the employee is representing, its jurisdiction and its activities; and

4. Legislative interests. The general subject areas of legislation that the department or agency is attempting to influence.

The employee must certify ~~These forms must be signed by the employee and the signature serves as a certificate~~ that the information entered on ~~that~~ the form is true, correct and complete.

This provision requires departments of Maine state government to file a registration form for each employee who is lobbying the Legislature on behalf of the agency. The disclosure is fairly brief (name, contact info, position, departmental information, legislative interest, etc.). The registration has always been administered using paper forms, and current law requires a

signature. The Commission staff seeks to eliminate the signature requirement so that the Commission may move toward electronic filing of these registrations and electronic display of the information to the public.

3 § 320. Disposition of fees

Fees collected pursuant to this chapter must ~~go in equal portions to the General fund and to~~ be deposited into a special revenue account of the commission to be used for the purposes of administering and enforcing the provisions of this chapter, including the costs of obtaining, maintaining and upgrading technology to facilitate disclosure of lobbying and campaign finance information to the public.

The commission shall, no later than November 15th of the year prior to any proposed change, establish the amount of the registration fee required to be paid pursuant to section 313 for the subsequent year.

Please see memo on next two pages.



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To: Commissioners
From: Jonathan Wayne, Executive Director
Date: November 18, 2014
Re: Proposed Change to Lobbyist Registration Fee

Under state law, when interest groups in Maine hire lobbyists to influence the Maine Legislature, they are required to register with the Commission and pay a \$200 annual fee. (3 M.R.S.A. § 313) Lobbyists file monthly reports disclosing the bills on which they are lobbying, and their compensation and expenses. The Commission puts this information online to inform the public who is spending money to influence Maine state government.

By law, one-half of the fees are deposited into the General Fund, and the other half is paid to a special revenue account within the Commission's budget. (3 M.R.S.A. § 313) This account receives around \$55,000 - \$65,000 annually. We use this revenue to pay for one staff position and for some IT and administrative expenses.

In effect, businesses, nonprofits and others are subsidizing the general costs of Maine government – just for the privilege of petitioning the Legislature. Instead, the Commission staff would like to propose that our agency receive the entire fee and use the increased revenue for IT expenses to better disclose lobbying and campaign finance information to the public. This is one of the chief duties of our agency.

Compared to ten years ago, we have made advances in getting more information online, but we seek to do a better job:

- The Legislature regularly considers proposals to increase the availability of information online. We would like to be as responsive as we can, and additional funding would make that possible.

- Our current system for filing reports is adequate, but has been criticized by some as confusing and complicated. Our long-term goal is to make the filing process as convenient and straightforward as possible.
- There is more interest by the public in scrutinizing election and lobbying information online. Software companies are developing new technologies to meet this demand. When prudent, we would like to be in a position to invest in better ways to deliver this information to the public.

We believe the proposal is reasonable, but we have not made it previously due to the cost to the General Fund. In the past seven fiscal years, the General Fund has received the following revenue from the lobbyist registration fees:

2008	2009	2010	2011	2012	2013	2014
\$58,600	\$59,400	\$66,345	\$69,735	\$55,275	\$67,725	\$59,400

We believe that the State of Maine may not, at this time, increase the \$200 registration fee paid by lobbyists, because of legislation in 1998-99. (*Maine Campground Owners Association v. Webster*, (Me. Super. Ct., 1998) (Docket No. CV-98-169)) The State was sued by organizations hiring lobbyists, after a citizen initiative increased the fee to \$400 per year.

Thank you for your consideration of this item.

**PROPOSED CHANGES TO
TITLE 21-A, CHAPTER 14: THE MAINE CLEAN ELECTION ACT**

21-A § 1125. Terms of participation

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12-A. Required records. The candidate or treasurer shall obtain and keep;

- A. Bank or other account statements for the campaign account covering the duration of the campaign;
- B. A vendor invoice stating the particular goods or services purchased for every expenditure in excess of \$50;
- C. A record proving that a vendor received payment for every expenditure in excess of \$50 in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee; and
- D. (REPEALED)
- E. A contemporaneous document such as an invoice, ~~contract~~ or timesheet that specifies in detail the services provided by a vendor who was paid in excess of \$500 for the election cycle for providing campaign staff or consulting services to a candidate. If the candidate compensates or expect to compensate the vendor \$1,000 or more during the election cycle, the invoice or timesheet must specify the dates on which services were provided and the number of hours actually worked during that time period. Purchases of goods made by the vendor with the candidate's campaign funds on behalf of the candidate do not count toward the \$1,000 threshold.

The candidate or treasurer shall preserve the records for 3 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the Commission upon its request.

This section of the Maine Clean Election Act (MCEA) requires candidates to keep certain records of their expenditures. The Commission requests these documents as part of compliance reviews and audits, in order to verify that the candidates' expenditures have been reported accurately that public campaign funds are being used for campaign-related purposes consistent with the Commission's guidelines.

In 2014, a handful of MCEA candidates for State Senate compensated individuals working as contractors in amounts that were quite large compared to past election years. The following amounts were paid through 10/21/2014:

- Senate candidate Fred Horch paid Tom Mitchell \$7,900*
- Senate candidate Mark Diehl paid David Marshall \$5,750*
- Senate candidate Alice Knapp paid Tom Mitchell \$3,000*

- Senate candidate David Bustin paid Charlotte Warren \$3,000.

The Commission staff proposes changes to the records that must be kept by candidates in order to better monitor their spending. We seek to find the right balance between imposing reasonable record-keeping requirements for candidates who opt into the Maine Clean Election Act program and overseeing candidates' use of public campaign funds.

**CHANGES PROPOSED BY COMMISSION STAFF TO
TITLE 21-A, CHAPTER 13: CAMPAIGN REPORTS AND FINANCES**

21-A § 1003. Investigations by commission

1. Investigations. The commission may undertake audits and investigations to determine whether a person has violated this chapter, chapter 14 or the rules of the commission. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or entity that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission. The Attorney General may apply on behalf of the commission to the Superior Court or to a court of another state to enforce compliance with a subpoena issued to a nonresident person. Service of any subpoena issued by the commission may be accomplished by:

- A. Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;
- B. Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or
- C. Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business.

2. Investigations requested. A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred. The Commission may decline to conduct an investigation if the alleged violation is alleged to have occurred more than three years before the investigation is requested and the benefit to the public would not justify the use of state resources for the investigation.

Under current statute, the Commission is required to make an investigation if a request shows sufficient grounds for believing that a violation may have occurred. The Commission occasionally receives requests for investigation relating to matters so stale that evidence may not be available and the public interest in ascertaining the facts long after the election is diminished. In 2014, the Commission received two requests to investigate political fundraising that occurred almost five years earlier. The Commission staff proposes that the Commission have the discretion to decide whether to conduct investigations in these circumstances.

2-A. Confidentiality. (REPEALED)

3. State Auditor. The State Auditor shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and has all necessary powers to carry out these responsibilities.

3-A. Confidential records. Investigative working papers of the commission are confidential except that the commission may disclose them to the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, “investigative working papers” means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an audit, investigation or other enforcement matter:

- A. Financial information not normally available to the public;
- B. Information that if disclosed, would reveal sensitive political or campaign information belonging to a party committee, political action committee, ballot question committee, candidate or candidate’s political committee, or other person who is the subject of an audit, investigation or other enforcement matter, even if the information is in the possession of a vendor or third party;
- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation, including any record of an interview, meeting or examination.

The commission may disclose investigative working papers or discuss them at a public meeting, except for the information or records subject to a privilege against discovery or use as evidence, if the information or record is materially relevant to a finding of fact, violation or other decision by the commission concerning an audit, investigation or other enforcement matter.

4. Attorney General. Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission ~~shall refer any apparent violations of this chapter~~ may refer potential violations of criminal law to the Attorney General for prosecution.

Under current practice, the Commission refers two types of matters to the Attorney General: (1) penalties that have not been paid voluntarily, and (2) misconduct related to an election or Commission investigation that could violate a criminal law. The Commission does not generally refer violations of Election Law to the Attorney General, because – unless there is a potential criminal violation – there is no apparent action for the Attorney General to take. The Commission staff suggests an amendment to avoid an implication that all Election Law violations must be referred.

21-A § 1013-A. Registration

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3. Party committees. The state, district and county committees of parties shall submit to ~~the commission~~ the municipal clerk the names and addresses of all their officers and of their treasurers and the name and address of the principal paid employee, if any, within 30 days after the appointment, election or hiring of these persons. ~~Municipal committees must file copies of the same information with the commission and the municipal clerk. District, county and municipal committees that provide their state party committees with the information required by this subsection to be submitted to the commission have met that requirement.~~ No later than the ~~2nd Monday in April~~ 15th of each year in which a general election is scheduled, the state committee of a party shall submit to the commission a consolidated report, ~~including the information required under this subsection, for the district, county and municipal committees of that party that includes the name and mailing address of the chair of each district, county, and municipal committee of that party for purposes of receiving correspondence from the commission.~~

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The Commission sends reminder postcards of filing deadlines to the committees of the political parties organized at the municipal or county level. Since the officers of these committees change frequently, the Commission requires updated contact information every two years to effectively remind the committees of the filing deadlines. The staff proposes deleting the requirement for local party committees to file their officer information directly with the Commission. Instead, the state party committees would submit the names and addresses of the chair of each local committee by April 15 of an election year.

21-A § 1014. Publication or distribution of political statements

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication

is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station or cable television system within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A, without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

4. Enforcement. A violation of this section may result in a civil penalty of no more than \$5,000, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the

missing information to the communication, the commission may decide to assess no civil penalty.

★ **5. Telephone calls.** Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 21 days before a primary election or the 35 days before a general election must clearly state the name and address of the person who made or financed the expenditure for the communication and whether the communication was authorized by a candidate, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure.

§§ 1014(1) – (3-B) require certain types of campaign communications to identify the person that paid for them and whether the communication was authorized by any candidate. § 1014(5) was enacted by the Legislature in 2005 at the suggestion of the Commission to cover automated telephone calls, which were not addressed previously in statute. (Public Laws of 2005, Chapter 301, § 12) The Commission 2005 proposal required only the disclosure of the name of the person who financed the telephone calls (perhaps due to the time limitations in recorded audio). Because of the increased use of these communications, the Commission staff proposes a requirement that the sponsor's address be included and a statement whether a candidate authorized the telephone calls – consistent with the other subsections of the statute.

6. Exclusions. The requirements of this section do not apply to:

A. Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

B. Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

C. Internet and e-mail activities costing less than \$100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and

E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand.

21-A § 1017. Reports by candidates

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★ **5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name and address of each payee and creditor and any refund that a payee has made to the candidate or an agent of the candidate. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

In campaign finance reports filed with the Commission, PACs, BQCs and state and local party committees are required to disclose both the name and the address of each payee. Candidates have not been required to report the address – only the name. The address can sometimes be necessary to identifying the specific vendor which sold the goods or services to the candidate. Some candidates purchase goods and services from vendors located outside Maine or from individuals or businesses under assumed names that are hard to identify. Within Maine, there are dozens of post offices and retail stores with the same name but different locations. Around half of the candidates for the Legislature participate in the Maine Clean Election Act program and it is important to understand how they have spent their public campaign funds. (This statute covers gubernatorial, legislative, and county candidates, as well as municipal candidates in about a dozen towns or cities with a population of 15,000 or more.)

Due to a change in the Commission's electronic filing system in 2014, the online forms used by candidates to enter contributions called for them to enter an address for their payees. Almost all candidates entered an address without questioning it. (We can recall receiving only one complaint.) The Commission proposes requiring candidates to disclose the address of each payee.

5-A. Valuation of contributions sold at auction. Any contribution received by a candidate that is later sold at auction must be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 2 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction.

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 2 to 4, the value of the contribution is the difference between the


value of the contribution as originally reported by the treasurer and the amount of the purchase price paid at auction. Unless further reports are filed in relation to a later election in the same calendar year, the disposition of any net surplus or deficit in excess of \$100 resulting from the difference between the auction price and the original contribution value must be reported in the same manner as provided in subsection 2, paragraph F or subsection 3-A, paragraph E, as appropriate.

6. Forms. Reports required by this section not filed electronically must be on forms prescribed, prepared and sent by the commission to the treasurer of each registered candidate at least 7 days before the filing date for the report. Establishment of or amendments to the campaign report filing forms required by this section must be by rule. Persons filing reports may use additional pages if necessary, but the pages must be the same size as the pages of the form. Although the commission mails the forms for required reports to candidates who are exempt from filing electronically, failure to receive forms by mail does not excuse treasurers, committees and other persons who must file reports from otherwise obtaining the forms or from late filing penalties.


At some time prior to 2003, the Maine Legislature decided to require changes in campaign finance report forms must be made by rule. Most candidates file their campaign finance reports electronically. The Commission staff believes it is not necessary for changes in forms to be made by rule. We propose deleting this requirement.

Rules of the commission establishing campaign report filing forms for candidates are routine technical rules as defined in Title 5, Chapter 375, subchapter 2-A.

7. Reporting exemption. (REPEALED)

 **7-A. Reporting exemption.** A candidate seeking election to a county or municipal office or a legislative candidate seeking the nomination of a party in an uncontested primary election is exempt from reporting as provided by this subsection.

A. A candidate seeking election to a county or municipal office may, at the time the candidate registers under section 1013-A, notify the commission that the candidate and the candidate's agents, if any, will not personally accept contributions, make expenditures or incur obligations associated with that candidate's candidacy. The notification must be sworn and notarized. A candidate who provides this notice to the commission is not required to appoint a treasurer and is not subject to the filing requirements of this subchapter if the statement is true.

 A-1. A legislative candidate seeking the nomination of a party in an uncontested primary election may, at the time the candidate registers under section 1013-A, notify the commission that the candidate and the candidate's agents, if any, will not personally accept contributions, make expenditures or incur obligations associated with that candidate's candidacy through the 35th day after the primary election. The notification must be sworn and notarized. A candidate who provides this notice to the commission is not required to appoint a treasurer or to file the campaign finance reports due 11 days before and 42 days after the primary election.

§ 1017(7-A) provides a financial reporting exemption for county and municipal candidates who are not engaging in any financial activity to promote their candidacy. To qualify for the exemption, the candidate must make a sworn statement that he or she will not accept contributions, make expenditures or incur obligations for their candidacy. This relieves candidates from the duty of appointing a treasurer and filing campaign finance reports. Under current practice, candidates seeking the exemption file the sworn statement as part of the registration form. If an exempt candidate later decides that he or she wants to engage in financial activity, the candidate may revoke the exemption under (7-A)(B) and begin raising or spending funds.

The exemption formerly was available to legislative candidates as well. In 2009, the Legislature removed the exemption for legislative candidates due to a policy concern that candidates might – as a surprise tactic – revoke their exemption close to a general election.

Every election year, around 30 - 40 individuals are recruited by local or state party activists to be “paper candidates.” Petitions are circulated to qualify these individuals for the primary election ballot by March 15. The individuals intend to withdraw after the primary election and be replaced with other individuals who will be the party’s nominee in the general election. In other words, they are “holding a spot” on the ballot for their party’s nominee. These paper candidates do not raise or spend any money.

The Commission staff spends a great deal of time contacting these candidates and urging them to file two campaign finance reports 11 days before and 42 days after the primary election. Many of them are confused by the requirement, insisting that they are “not candidates” (even though their names appear on the primary election ballot). The Commission sometimes needs to threaten enforcement action in order to persuade them to file their reports. This process is wasteful for the candidates and for the Commission staff.

The Commission staff proposes reinstating a limited reporting exemption for legislative candidates for the primary election period only. It would only be available to candidates with no opponent in the primary election. Under our proposal, candidates who commit to raise and spend no money through the 35th day after the primary election would be exempt from filing the 11-day pre-primary and 42-day post-primary campaign finance reports. Once a paper candidate registered and claimed the exemption, he or she would not need to make any further filings with the Ethics Commission for the election year.

B. The notice provided to the commission under paragraph A may be revoked. Prior to revocation, the candidate must appoint a treasurer. The candidate may not accept contributions, make expenditures or incur obligations before the appointment of a treasurer and the filing of a revocation notice are accomplished. A revocation notice must be in the form of an amended registration, which must be filed with the commission no later than 10 days after the appointment of a treasurer. The candidate and the candidate's treasurer, as of the date the revocation notice is filed with the commission, may accept contributions, make expenditures and incur obligations associated with the candidate's candidacy. Any candidate who fails to file a timely revocation notice is subject to the penalties prescribed in section 1020-A, subsection 4-A, up to a maximum of \$5,000.

Lateness is calculated from the day a contribution is received, an expenditure is made or an obligation is incurred, whichever is earliest.



8. Disposition of surplus. A candidate or treasurer of a candidate registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355 must dispose of a surplus exceeding \$100 within 4 years of the election for which the contributions were received by:

This subsection sets out the way a candidate may dispose of surplus campaign funds after an election. The Commission staff proposes inserting candidates into the first statement because candidates are usually making the decision as to disposing of surplus funds.

A. Returning contributions to the candidate's or candidate's authorized political committee's contributors, as long as no contributor receives more than the amount contributed;

B. A gift to a qualified political party within the State, including any county or municipal subdivision of such a party;



B-1. A gift to a political action committee or ballot question committee registered with the Commission;

§ 1017(8) requires candidates to dispose of unspent campaign funds within four years of the election for which they were raised. This statute applies only to traditionally financed candidates who have raised campaign contributions – not to Maine Clean Election Act (MCEA) candidates. In response to questions from candidates, the Commission staff proposes permitting candidates to donate surplus funds to a political action committee or ballot question committee.

C. An unrestricted gift to the State. A candidate for municipal office may dispose of a surplus by making a restricted or unrestricted gift to the municipality;

D. Carrying forward the surplus balance to a political committee established to promote the same candidate for a subsequent election;

D-1. Carrying forward the surplus balance for use by the candidate for a subsequent election;



D-2. Spending the funds to pay expenses related to a recount of the candidate's election;

The Commission staff also proposes permitting candidates to spend surplus funds for a recount. Current law (§ 1018-B) forbids MCEA funds to be spent for a recount.

E. Transferring the surplus balance to one or more other candidates registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355, or to

political committees established to promote the election of those candidates, provided that the amount transferred does not exceed the contribution limits established by section 1015;

F. Repaying any loans or retiring any other debts incurred to defray campaign expenses of the candidate;

G. Paying for any expense incurred in the proper performance of the office to which the candidate is elected, as long as each expenditure is itemized on expenditure reports; and

H. A gift to a charitable or educational organization that is not prohibited, for tax reasons, from receiving such a gift.

The choice must be made by the candidate for whose benefit the contributions were made.

9. Campaign termination report forms. ~~The commission shall provide each candidate required to report campaign contributions and expenditures with a campaign termination report form. A candidate shall file the campaign termination report with the commission as required in this subsection. The campaign termination report must be complete as of June 30th of the year following the campaign of the previous year. This form must show any deficits or surpluses to be carried over to the next campaign. Funds not carried forward to the next campaign must be disposed of as provided in subsection 8. Campaign reporting is as follows.~~

~~A. Candidates with surplus campaign funds following an election shall file termination reports no later than July 15th of the year following the campaign of the previous year.~~

~~B. Candidates with a campaign deficit following an election shall file termination reports no later than July 15th of the year following the campaign of the previous year.~~

~~C. Candidates with a deficit who will not participate in the next election for the same office shall file semiannual reports until the deficit is liquidated.~~

~~D. Candidates who collect funds subsequent to an election for purposes other than retiring campaign debt shall register with the commission pursuant to section 1013-A.~~

The Commission staff proposes deleting § 1017(9) because it has limited utility and is in tension with other subsections of § 1017. § 1017(9) seems to require candidates to terminate their campaigns by June 30 following the general election and carry forward all funds and debts to the next campaign. In contrast, under § 1017(8), candidates who have not spent all their campaign funds have four years to dispose of the funds. Under § 1017(2)(F) & (3-A)(E), candidates are required to file a semi-annual report every six months if they have more than \$100 in cash, or unpaid loans or debts, after an election.

Given these two different approaches in statute, the Commission staff has followed § 1017(2)(F) & (3-A)(E). We have encouraged candidates to wind up their campaigns in the months after election, but not required it. Since the state moved to mandatory filing of campaign finance reports online, we have not used a form called a "termination report."

10. Electronic filing. The treasurer of a candidate or committee that has receipts or expects to have receipts of more than \$1,500 shall file each report required by this section

through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a candidate or committee submits a written request that states that the candidate or committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted by April 15th of the election year, except that a candidate registered according to subsection 4 has 10 business days from the date of registration to submit a request to the commission. The commission shall grant all reasonable requests for exceptions.

21-A §1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

B. Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; or the 35 days, including election day, before a general or special election.

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

3. Report required; content; rules. (REPEALED)

4. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of ~~\$100~~ \$250 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

When PACs and party committees spend money on communications to voters advocating for or against candidates (such as mailers or advertising), they are usually required by § 1019-B to file an "independent expenditure" report with the Commission. This is a one-time report that informs the public of the date, amount, payee, and purpose of the expenditure and requires an affidavit that the expenditure was made independently of candidates in the race.

The statute directs the Commission to establish by rule a schedule for the filing of independent expenditure reports. The current reporting schedule has proven to be difficult for PACs and party committees to understand. People who are raising and spending money to influence candidate elections deserve a reasonably straightforward schedule. The Commission staff will be proposing a simpler schedule at your December meeting, as part of a proposed rule-making.

One aspect of the problem is that one deadline applies for expenditures greater than \$250 per candidate, and another deadline applies for expenditures between \$100 and \$250 per candidate.

In order to achieve this simpler schedule, the Commission staff proposes deleting IE reports for expenditures between \$100 and \$250 per candidate. The Commission receives relatively few reports of expenditures in this dollar range. Also, most paid electioneering communications are required to disclose who paid for them in the communication themselves. This provides the public with more immediate disclosure of who paid for the communication than a financial report filed with the Commission.

★ A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule ~~that takes into consideration existing campaign finance reporting requirements~~. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The Commission staff proposes deleting this clause from § 1019-B(4)(A) which is ambiguous and could tie the Commission's hands in setting a reasonable reporting schedule through rulemaking.

★ B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of ~~\$100~~ \$250 in any one candidate's election, the date and purpose of each expenditure, ~~and~~ the name of each payee or creditor and any other information required by the commission that would facilitate the public's identification of the communication that is the subject of the report. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

The Commission staff believes some small changes to the IE reporting form would make it more useful for candidates, party activists, and members of the public. Typically, the spender enters an expenditure code, and a remark such as "mailer" or "TV ad." Due the proliferation of mailings and ads, it can be impossible to link the payment listed on the IE form to a specific communication received by a member of the public.

After seeking input, in 2015 the Commission staff would like to propose small changes to the IE reporting form to provide candidates and the public with better information that would help the public identify which communications are the subject of the report.


C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

5. **Exclusions.** An independent expenditure does not include:

- A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;
- C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

21-A § 1020. Failure to file on time (REPEALED)

21-A § 1020-A. Failure to file on time

 **1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of ~~\$10~~ \$100. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

Some candidates for legislative and county office do not register with the Commission even after multiple attempted contacts by the Commission staff. The Commission sometimes needs to initiate an enforcement process in order to persuade some individuals to register. Under current law, if a candidate is late in registering with the Commission, the Commission may assess a forfeiture of \$10. This amount is so small it has little punitive value. Whether the office is municipal, county, or legislative, the public deserves to have each candidate for public office file a simple form providing contact information and identifying a treasurer and other officers. The Commission recommends increasing the penalty to \$100.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. Basis for penalties. (REPEALED)

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures ~~for the filing period that were reported late~~, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%;
- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a two-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

§1020-A(4-A) establishes the formula for calculating preliminary penalty amounts when candidates, party committees, and independent spenders file a campaign finance report late. Under current statute, the formula is based on the total amount of contributions or expenditures during the period of time covered by the report, multiplied by a percentage and the number of days late.

Basing the penalty on the total activity during the period makes sense when the entire report is late. When a report is considered late because it is substantially incomplete, however, it makes more sense to base the preliminary penalty on the amount of financial activity that is

reported late. For example, if a candidate filed a report showing \$500 in contributions and amended the report a week later to show additional contributions for the period of \$300, the late penalty would be based on the \$300 in contributions missing from the original report – rather than the \$800 total for the period.

5. Maximum penalties. (REPEALED)

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4;

A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late;

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late;

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B.

E. **(REPEALED)**

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a ~~sworn~~ statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.



Under this subsection, when a candidate, party committee, or independent spender files a report late, the filer may request a waiver of the preliminary penalty. The Commission typically receives requests for waivers in the form of a letter or email. In keeping with current practice, the Commission proposes deleting the requirement that a waiver request be sworn, which is an unnecessary administrative requirement that seems to add little to the Commission's process.

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

SUBCHAPTER IV

REPORTS BY POLITICAL ACTION COMMITTEES

21-A § 1051. Application

This subchapter applies to the activities of political action committees organized in and outside this State that accept contributions, incur obligations or make expenditures for the election of state, county or municipal officers, or for the support or defeat of any campaign, as defined in this subchapter.

21-A § 1052. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Campaign. "Campaign" means any course of activities to influence the nomination or election of a candidate or to initiate or influence a ballot question ~~any of the following ballot measures~~:

- ~~A. A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;~~
- ~~B. A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;~~
- ~~C. An amendment to the Constitution of Maine under Article X, Section 4;~~
- ~~D. A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;~~
- ~~E. The ratification of the issue of bonds by the State or any agency thereof; and~~
- ~~F. Any county or municipal referendum.~~

The Commission staff propose defining a term "ballot question" (immediately below) to be referenced in other sections of statute, such as §§ 1055-A and 1056-B. To avoid duplication, we propose deleting paragraphs 1(A) through 1(F) from the definition of campaign and replacing them with the new term ballot question.

1-A. Ballot question. "Ballot question" means

- A. A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- B. A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;
- C. An amendment to the Constitution of Maine under Article X, Section 4;

D. A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;

E. The ratification of the issue of bonds by the State or any agency thereof; or

F. Any county or municipal referendum.

2. Committee. "Committee" means any political action committee, as defined in this subchapter, and includes any agent of a political action committee.

3. Contribution. "Contribution" includes:

A. A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

B. A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee;

C. Any funds received by a political action committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or

D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee that is used by the political action committee to initiate or influence a campaign.

4. Expenditure. The term "expenditure:"

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and

(3) The transfer of funds by a political action committee to another candidate or political committee; and

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or the spouse or domestic partner of a candidate;

(2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not

organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$250 with respect to any election;

(5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and

(6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination or election of any person to state or county office.

4-A. Influence. “Influence” means to promote, support or oppose or defeat.

4-B. Initiate. “Initiate” includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

5. Political action committee. The term "political action committee:"

A. Includes:

(1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to initiate or influence a campaign;

(2) **(REPEALED)**

(3) **(REPEALED)**

(4) Any organization, including any corporation or association, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose; and

(5) Any organization that does not have as its major purpose influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office.

B. Does not include:

(1) A candidate or a candidate's treasurer under section 1013-A, subsection 1;

(2) A candidate's authorized political committee under section 1013-A, subsection 2;

(3) A party committee under section 1013-A, subsection 3; or

(4) An organization whose only payments of money in the prior 2 years for the purpose of influencing a campaign in this State are contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and that has not raised and

accepted any contributions during the calendar year for the purpose of influencing a campaign in this State.

21-A § 1052-A. Registration

A political action committee shall register with the commission and amend its registration as required by this section. A registration is not timely filed unless it contains all the information required in this section.

1. Deadlines to file and amend registrations. A political action committee shall register and file amendments with the commission according to the following schedule.

A. A political action committee as defined under section 1052, subsection 5, paragraph A, subparagraph (1) or (4) that receives contributions or makes expenditures in the aggregate in excess of \$1,500 and a political action committee as defined under section 1052, subsection 5, paragraph A, subparagraph (5) that receives contributions or makes expenditures in the aggregate in excess of \$5,000 for the purpose of influencing the nomination or election of any candidate to political office shall register with the commission within 7 days of exceeding the applicable amount.

The Commission staff proposes that the receipt of contributions exceeding the \$1,500 or \$5,000 thresholds for purposes of influencing an election would trigger a duty to register as a PAC. Under current law, the PAC registration requirement is triggered only by spending above those amounts.

B. A committee shall amend the registration within 10 days of a change in the information that committees are required to disclose under this section.

C. A committee shall file an updated registration form between January 1st and March 1st of each year in which a general election is held. The commission may waive the updated registration requirement for a newly registered political action committee or other registered political action committee if the commission determines that the requirement would cause an administrative burden disproportionate to the public benefit of the updated information.

2. Disclosure of treasurer and officers. A committee must have a treasurer and a principal officer. The same individual may not serve in both positions. The committee's registration must contain the names and addresses of the following individuals:

- A. The treasurer of the committee;
- B. A principal officer of the committee;
- C. Any other individuals who are primarily responsible for making decisions for the committee;
- D. The individuals who are primarily responsible for raising contributions for the committee; and
- E. The names of any other candidates or Legislators who have a significant role in fund-raising or decision-making for the committee.

3. Other disclosure requirements. A committee's registration must also include the following information:

- A. A statement indicating the specific candidates, categories of candidates or campaigns that the committee expects to support or oppose;
- B. If the committee is formed to influence the election of a single candidate, the name of that candidate;
- C. The form or structure of the organization, such as a voluntary association, membership organization, corporation or any other structure by which the committee functions, and the date of origin or incorporation of the organization;
- D. If the committee has been formed by one or more for-profit or nonprofit corporations or other organizations for the purpose of initiating or influencing a campaign, the names and addresses of the corporations or organizations;
- E. The name of the account that the committee will use to deposit contributions and make expenditures pursuant to section 1054, and the name and address of the financial institution at which the account is established; and
- F. Any additional information reasonably required by the commission to monitor the activities of political action committees in this State under this subchapter.

4. Acknowledgment of responsibilities. The treasurer, principal officer and any other individuals who are primarily responsible for making decisions for the committee shall submit a signed statement acknowledging their responsibilities on a form prescribed by the commission within 10 days of registering the committee. The signed acknowledgment statement serves as notification of the responsibilities of the committee to comply with the financial reporting, record-keeping and other requirements of this chapter and the potential personal liability of the treasurer and principal officer for civil penalties assessed against the committee. The commission shall notify the committee of any individual who has failed to submit the acknowledgment statement. Failure to return the acknowledgment statement is a violation of this subchapter for which a fine of \$100 may be assessed against the committee. This section also applies to individuals named in an updated or amended registration required by this subsection who have not previously submitted an acknowledgment statement for the committee with the commission.

5. Resignation and removal. An individual who resigns as the treasurer, principal officer or primary decision-maker of a committee shall submit a written resignation statement to the commission. An individual's resignation is not effective until the commission receives the written resignation statement from the individual. If an individual is involuntarily removed from the position of treasurer, principal officer or primary decision-maker by the committee, the committee shall notify the commission in writing that the individual has been removed from the position. The commission may prescribe forms for these purposes.

21-A § 1054-B. Payments to Legislators by political action committees

★ If a current member of the Maine Legislature is a principal officer or treasurer of a political action committee or is one of the individuals primarily responsible for raising contributions or making decisions for the political action committee, the committee may not compensate the Legislator or a member of the Legislator's immediate family or household for services provided to the committee. The committee may reimburse the Legislator or family or household member for expenses incurred in the proper performance of the duties of Legislator, for purchases made on behalf of the committee and for travel expenses associated with volunteering for the committee.

Under current law, PACs must be formed in order to spend certain amounts to influence elections. Once a PAC is formed, however, there are no restrictions in law concerning how the PAC may spend its funds. In response to one of the PACs that received press attention in 2014, the Commission staff proposes that if a Legislator has a principal role in a PAC that the PAC be prohibited from compensating the Legislator or a member of the Legislator's immediate family or household for services provided to the PAC. Please note that the current proposal is not limited only to leadership PACs that are controlled by a single Legislator.

21-A § 1055-A. Political communications to influence a ballot question

★ **1. Communications to influence ballot question elections.** Whenever a person makes an expenditure exceeding \$500 expressly advocating through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other non-periodical publications or through prerecorded automated telephone calls or scripted live telephone communications, for or against ~~an initiative or referendum that is on the ballot a~~ ballot question, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication.

In 2013, the Legislature enacted a proposal by the Commission that paid communications costing more than \$500 expressly advocating for or against a ballot question would need to state the name and address of the person that paid for the communication. The requirement was based on the "paid for" requirements applicable to candidate elections (§ 1014). The Commission proposes adding telephone calls to the types of communications covered by the new statute, which were omitted from the Commission's 2013 proposal.

2. Exceptions. The following forms of political communication do not require the name and address of the person who made or financed the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: clothing, envelopes and stationery, small promotional items, tickets to fundraisers and electronic media advertisements where compliance with this section would be impracticable due to size or character limitations and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. "Small promotional items" includes

but is not limited to ashtrays, badges and badge holders, balloons, campaign buttons, coasters, combs, emery boards, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers and swizzle sticks.

3. Enforcement. A violation of this section may result in a civil penalty of no more than \$5,000. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it.

Most people and organizations spending money on communications to advocate for or against a ballot question willingly identify themselves as the sponsor in the communication. In cases when the information is not included in a communication and the Commission receives a complaint, it may be appropriate to consider assessing a civil penalty. The Commission staff proposes a penalty provision that is based on § 1014(4).

21-A § 1056. Expenditure limitations

Any committee required to register under this chapter shall comply with the following expenditure limitations.

1. Aggregate expenditures. A committee may not make contributions in support of the candidacy of one person aggregating more than the contribution limits established by the commission pursuant to section 1015.

2. Prohibited expenditures. No committee may make any expenditure for liquor to be distributed to or consumed by voters while the polls are open on election day.

21-A § 1056-B. Ballot question committees

★ A person not defined as a political action committee who receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a ballot question campaign as defined by section 1052, subsection 1, shall register and file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign. The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee.

...

21-A § 1062-A. Failure to file on time

1. Registration. A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff; or
- C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.



3. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures ~~for the filing period that were reported late~~, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%;
- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

Any penalty of less than \$10 is waived.

§1062-A(3) establishes the formula for calculating preliminary penalty amounts when PACs and BQCs file a campaign finance report late. Under current statute, the formula is based on the total amount of contributions or expenditures during the period of time covered by the report, multiplied by a percentage and the number of days late.

Basing the penalty on the total activity during the period makes sense when the entire report is late. When a report is considered late because it is substantially incomplete, however, it makes more sense to base the preliminary penalty on the amount of financial activity that is reported late. For example, if a PAC filed a report showing \$500 in contributions and amended a week later to show additional contributions for the period of \$300, the late penalty would be based on the \$300 in contributions missing from the original report – rather than the \$800 total for the period.

Violations accumulate on reports with filing deadlines in a two-year period that begins on January 1st of each even-numbered calendar year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late.

5. Request for a commission determination. (REPEALED)

5. Request for a commission determination. If the commission staff finds that a political action committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the political action committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a political action committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary



penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a ~~sworn~~ statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

In keeping with current practice, the Commission proposes deleting the requirement that a waiver request be sworn, which is an unnecessary administrative requirement that seems to add little to the Commission's process.

6. Final notice of penalty. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

7. List of late-filing committees. The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

8. Failure to file. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

8-A. Penalties for failure to file report. The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$10,000.

9. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

21-A § 1062-B. Failure to keep records

A committee that fails to keep records required by this chapter may be assessed a fine of up to \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, whether the violation occurred as the result of an error by someone outside the control of the committee, whether the committee intended to conceal its

financial activity, the amount of financial activity that was not documented and the level of experience of the committee's volunteers and staff.